



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2004

Ms. Florence R. Upton
Assistant City Attorney
Administrative & Financial Services Division
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-5967

Dear Ms. Upton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205271.

The San Antonio Police Department (the "department") received a request for seven categories of information relating to a specified department officer. You claim that the requested information is excepted from disclosure pursuant to sections 552.101, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the information that you submitted to us for review as "Attachment II" and portions of the information that you submitted to us for review as "Attachment III" are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.¹ You state that the City of San Antonio is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain and an internal file that a police department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g).

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See Local Gov't Code* §§ 143.051 - .055. Such investigatory records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); *see also* Open Records Decision No. 562 at 6 (1990). However, information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released.² *See City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that Attachment II is "all information contained in the police department's internal personnel files regarding [the specified department officer]" and that it is maintained pursuant to section 143.089(g) of the Local Government Code. Based on your representations and our review of Attachment II, we conclude that this information is confidential pursuant to section 143.089(g) and, thus, must be withheld pursuant to section 552.101 of the Government Code. Although you state that portions of Attachment III are reasonably related to the specified department officer's employment relationship with the department and, thus, should also be considered confidential under section 143.089(g), you indicate that this particular information is not maintained in the department's internal personnel files for the officer. Accordingly, we conclude that no portion of Attachment III may be withheld pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note that criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

² We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. *See Local Gov't Code* § 143.089(g). You inform us that you have done so.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Further, when a governmental entity compiles information that relates to a specific individual as a criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not.³ *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). Accordingly, we conclude that to the extent that the requested information contains any CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy on the basis of *Reporters Committee*, the department must withhold such information pursuant to section 552.101 of the Government Code. *Cf.* Gov't Code § 411.082(2) (definition of criminal history record information does not include driving record information).

We also note that social security numbers that are contained within Attachment III may be excepted from disclosure pursuant to section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Thus, we have no basis for concluding that the social security numbers that are contained within Attachment III are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In addition, we note that portions of Attachment III, which we have marked, are otherwise excepted from disclosure pursuant to section 552.101 in conjunction with the common-law

³ Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy.

right to privacy.⁴ Information must be withheld on the basis of the common-law right to privacy when it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). Accordingly, we conclude that the department must withhold these particular marked portions of Attachment III pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that portions of Attachment III are excepted from disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *see also Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin, 2001, no pet.). The purpose of section 552.111 is "to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See* Open Records Decision No. 615 at 5-6 (1993).

⁴ We note that any information contained within Attachment III, which we have marked and which is encompassed by this ruling, constitutes a representative sample of the types of information in Attachment III (to include the submitted audiotape) that may be excepted from disclosure under the Public Information Act (the "Act").

Although you state that these portions of Attachment III constitute intraagency communications between the specified department officer and other department officers, we find that no portion of these communications consists of advice, opinions, or recommendations concerning the policymaking processes of the department. Accordingly, we conclude that the department may not withhold any portion of Attachment III under section 552.111 of the Government Code.

Finally, you claim that portions of Attachment III are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). Based on our review of Attachment III, we conclude that the department must withhold the portions of this information, which we have marked, pursuant to section 552.130 of the Government Code, but only to the extent that this particular motor vehicle information constitutes Texas motor vehicle information.

In summary, the department must withhold Attachment II pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. To the extent that the requested information contains CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy on the basis of *Reporters Committee*, the department must also withhold such information pursuant to section 552.101. Social security numbers that are contained within Attachment III may be confidential under federal law. The department must withhold the portions of Attachment III, which we have marked, pursuant to section 552.101 in conjunction with the common-law right to privacy. The department must withhold the portions of Attachment III, which we have marked, pursuant to section 552.130 of the Government Code, but only to the extent that this particular motor vehicle information constitutes Texas motor vehicle information. The department must release the remaining submitted information in Attachment III to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 205271

Enc. Marked documents

c: Mr. Dan Hargrove
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(w/o enclosures)